

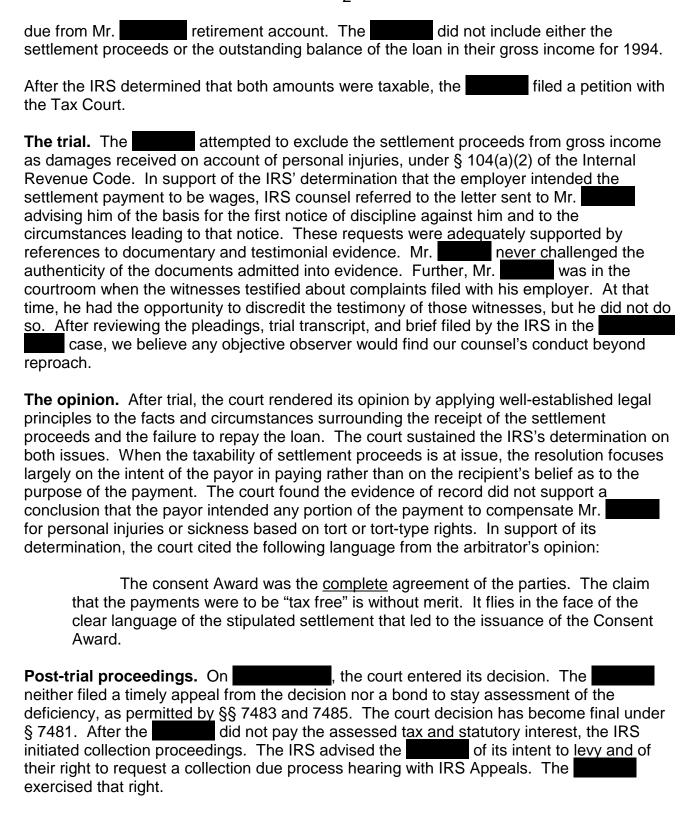
DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE WASHINGTON, D.C. 20224

July 25, 2002

Number: **INFO 2002-0207** CONEX-130784-02 Release Date: 12/31/2002 CC:ITA

UIL:61.09-18; 104.03-00

Dear :
This letter is in response to your inquiry dated April 10, 2002, on behalf of your constituent, Mr. wants a review of v. Commissioner, T.C.M. at a case which upheld the Internal Revenue Service determination that were liable for additional tax for Apparently, Mr. takes offense to certain requests for findings of fact in the brief filed with the United States Tax Court by the IRS counsel.
The have exercised their rights as taxpayers by contesting a tax deficiency, which the court upheld. The collection process is under way, and the safeguards authorized by law have been extended to the substitution. They may not relitigate or raise issues the court has already decided. Below is a detailed explanation of the events surrounding their case.
Underlying facts. After his employer proposed to terminate him for disciplinary reasons, Mr. filed formal complaints with a state agency and the Equal Employment Opportunity Commission. He alleged discrimination based on age and disability and sought damages for financial loss and pain and suffering. Prior to the hearing before an arbitrator, the parties agreed to settle. Mr. agreed to withdraw his complaints and to retire. As consideration, his employer made certain payments to Mr. comprising one and one-half times his annual salary. Subsequently, a dispute arose between Mr. and his employer over whether this amount was taxable. The arbitrator issued an opinion agreeing with the employer that the settlement agreement did not support Mr. position that the parties intended the settlement proceeds to be tax free.
Mr. also failed to repay \$, the outstanding balance of a loan received from the state retirement system. The system satisfied the loan by deducting the amount



Explanation of rights. Under §§ 6330 and 6331, a taxpayer is entitled to notice before levy and notice of the right to a fair hearing before an impartial officer of the IRS Office of Appeals. If the taxpayer requests a hearing, he or she may raise in that hearing any relevant issue relating to the unpaid tax or the proposed levy, including challenges to the appropriateness of the collection action and offers of collection alternatives, which may include:

- posting a bond
- substituting other assets
- initiating an installment agreement
- proposing an offer-in-compromise.

The Appeals Officer will consider these issues and the need to have an efficient collection of taxes that is no more intrusive for the taxpayer than necessary. If the IRS Appeals rules in favor of the IRS, the taxpayer can request a judicial review in the United States Tax Court.

However, a taxpayer who has had an opportunity to dispute a tax liability determined by the IRS may not raise any issue relating to the existence or amount of that liability. Because the have already exercised their judicial rights, they may neither raise before Appeals nor relitigate their tax liability that was decided in the earlier opinion. See Behling v. Commissioner, 118 T.C. No. 36 (June 17, 2002); Sego v. Commissioner, 114 T.C. 604, 609 (2000).

I hope this information is helpful. Please call Mr. Keith A. Aqui, Identification Number 50-00171, at (202) 622-4920, if you have any questions. I have enclosed a copy of the opinion in v. Commissioner.

Sincerely,

Robert A. Berkovsky Branch Chief Office of Associate Chief Counsel (Income Tax & Accounting)

Enclosure